

No. 33668

**IN THE SUPREME COURT OF APPEALS OF
WEST VIRGINIA**

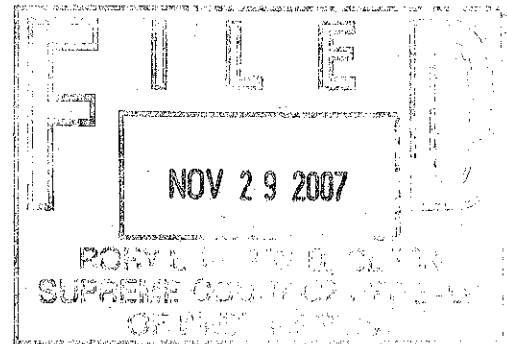
**STEPHEN WESTLEY HATFIELD,
Prisoner No. 16456,**

Appellee - Petitioner Below,

VS.

**HOWARD PAINTER, Warden of
Mount Olive Correctional Complex,**

Appellant - Respondent Below.



BRIEF OF APPELLANT

**Thomas M. Plymale, Esq.
Assistant Prosecuting Attorney for
Wayne County
P. O. Box 758
Wayne, West Virginia 25570
304-272-6395
Counsel for Appellant**

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BRIEF OF APPELLANT

II. KIND OF PROCEEDING

Stephen W. Hatfield filed a Writ of Habeas Corpus on September 28, 2000, alleging, among other things, that his constitutional rights were violated because he was incompetent at the time he entered his guilty plea and that he was denied a full evidentiary hearing on the issue of his competency. Counsel for Hatfield filed for summary judgment upon Grounds One (as set forth above), Three and Four of his Habeas Corpus Petition.

Special Judge Hoke entered an order on January 31, 2005, granting summary judgment as to Ground One. Appellant objected to the Order of January 31, 2005, upon the basis that it was not properly supported by particular findings of fact and conclusions of law. The Court entered a

Supplemental Order on April 16, 2007, again granting summary judgment to Hatfield and setting aside his convictions for First Degree Murder and Malicious Wounding and reinstating the original Indictment.

It is from the Supplemental Order of March 16, 2007, that Appellant takes this appeal.

II. ISSUES ON APPEAL AND RELIEF REQUESTED

Whether the special judge erred in granting Summary Judgment to Petitioner and setting aside Petitioner's guilty plea and convictions for First Degree Murder without a recommendation of mercy and two (2) counts of Malicious Wounding, by ruling that the Trial Judge deprived Petitioner of his due process rights by finding Petitioner competent to stand trial without a full evidentiary hearing and subsequently accepting Petitioner's guilty plea to First Degree Murder and two counts of Malicious Wounding. It is respectfully requested that the Supplemental Order of April 16, 2007 granting Summary Judgment be reversed, that Petitioner's convictions be reinstated, and that the case be remanded for a Omnibus hearing on the remaining issues in the Habeas Corpus action.

III. RESTATEMENT OF THE FACTS

On May 5, 1988, Stephen W. Hatfield murdered his ex-girlfriend, shot and wounded her new boyfriend, Dewey Myers, and then shot and wounded an innocent bystander, Roger Cox, before fleeing the murder scene. Hatfield then embarked upon a crime spree that included kidnapping two women in the State of Ohio before re-entering the State of West Virginia where he was wounded and captured after an exchange of gunfire with police.

On January 27, 1989, Special Judge Elliott Maynard conducted a hearing on Hatfield's competency to stand trial and, upon consideration of the psychiatric reports of record, the Court entered an Order finding Hatfield to be competent to stand trial. The Order also provided that

Hatfield could request a hearing on the Order within a reasonable time. No request for additional hearing was ever made. The Order further set the matter for trial on February 27, 1989.

On February 27, 1989, Hatfield pled guilty to one (1) count of First Degree Murder and two (2) counts of Malicious Wounding, with a finding that the crimes were committed with a firearm. Prior to the aforesaid plea, the Court was made aware by defense counsel that they opposed his guilty plea and that they had questions about his competence to enter a plea, as did his treating psychiatrist. The Court then conducted a lengthy interrogation of the Defendant and his understanding of the proceedings, and at the conclusion thereof, deemed him competent to enter the guilty plea.

On December 6, 1989, the Court sentenced Hatfield to life without the possibility of parole on the Murder conviction, and a term of not less than two (2) nor more than ten (10) years on each of the Malicious Wounding convictions, to be served concurrently.

Hatfield appealed his convictions to the West Virginia Supreme Court of Appeals on December 16, 1990, and this Court held in State v. Hatfield, 186 W. Va. 507, 413 S.E. 2d 162 (1991) (Hatfield I) "that remand was required to enable trial Court to make certain inquiries of Defendant and ask Defendant whether he understood counsel's reasons for opposing guilty plea".

Pursuant to Hatfield I, Judge Maynard conducted a hearing on December 19, 1996, whereupon the Judge inquired of Hatfield whether he understood counsel's objections to his guilty plea, which Hatfield stated that he understood those objections. Hatfield then responded that he no longer wished to plead guilty and requested that his plea and sentences be set aside. Notwithstanding Hatfield's response, Judge Maynard ruled that he had "competently, knowingly, understandingly and voluntarily entered his plea at a time when he was fully competent so to do". Senior Judge James

O. Holliday signed an Order setting forth the findings made by Judge Maynard on January 28, 1998.

Hatfield appealed the underlying convictions and the January 28, 1988 order to the West Virginia Supreme Court of Appeals and this Court affirmed the ruling of the Circuit Court in State v. Hatfield, 206 W. Va. 125, 522 S.E. 2d 416 (1999) (Hatfield II) and concluded that "the lower Court fulfilled this Court's directive on remand and did not deny the Appellant his due process rights in so doing".

Hatfield then filed the present action, a Writ for Habeas Corpus relief on September 28, 2000. Counsel for Appellee filed their Motion for Summary Judgment on Ground One (competency/competency hearing), Ground Three (that the West Virginia Supreme Court violated his rights in its ruling in Hatfield II) and Ground Four (improper sentencing standard) of his Petition. Special Judge Jay M. Hoke granted summary judgment as to Ground One by Order of January 31, 2005. Appellant objected to the entry of the Order on the basis that the Court's ruling was not supported by particular findings of fact and conclusions of law. The Special Judge then entered a Supplemental Order on March 16, 2007, granting summary judgment as to Ground One of the Petition and holding that all other grounds for Habeas Corpus relief to be moot. The Supplemental Order of March 16, 2007, also set aside Hatfield's convictions for First Degree Murder and two counts of Malicious Wounding and re-instated the original Indictment in State vs. Hatfield, Indictment 88-F-26.

IV. STANDARD OF REVIEW

"Summary Judgment is proper only if, in the context of the motion and any opposition to it, no genuine issue of material fact exists and the movant demonstrates entitlement as a matter of law" Syllabus Point 2, in part, Gentry v. Marcum, 195 W. Va. 512, 466 S.E. 2d 171 (1995). On an appeal

to this Court for review of a Circuit Court ruling on a Writ of Habeas Corpus, "the Appellant bears the burden of showing that there was error in the proceedings below resulting in the judgment of which he complains, all presumptions being in favor of the correctness of the proceedings and judgment in and of the trial Court", Syllabus Point 1, White v. Haines, 215 W. Va. 698, 601 S.E. 2d 18 (2004); Syllabus Point 2, Perdue v. Coiner, 156 W. Va. 467, 194 S.E. 2d 657 (1973). "In reviewing challenges to the findings and conclusions of the Circuit Court in a Habeas Corpus action, we apply a three-prong standard of review. We review the Final Order and ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to do novo review". State ex rel Daye v. McBride, Syllabus Point 1, 2007 WVSC 33100-062707; Syllabus Point 1, Mathena v. Haines, 219 W. Va. 417, 633 S.E. 2d 771 (2006).

V. ARGUMENT

I. THE SPECIAL JUDGE ERRED IN GRANTING SUMMARY JUDGMENT TO APPELLEE ON HIS PETITION FOR HABEAS CORPUS RELIEF.

A. THE TRIAL JUDGE DID NOT DEPRIVE THE APPELLEE OF HIS DUE PROCESS RIGHTS IN HIS COMPETENCY RULINGS AND IN ACCEPTING APPELLEE'S GUILTY PLEA.

The trial Judge held a competency hearing on January 27, 1989, whereupon he entered an Order on February 6, 1989, finding by a preponderance of the evidence that the Appellee was competent to stand trial and providing that Hatfield may have a hearing on this issue by notifying the Court of his desire for such "within a reasonable time". Defense counsel did not object to the Court's findings on January 27, 1989, nor did the Appellee or his trial counsel ever request a hearing pursuant to W. Va. Code §27-6A-2. The record of the proceeding further shows that no conflicting

psychiatric evidence was proffered or introduced at the January 27, 1989 hearing (Tr. pp. 49-55a).

On February 27, 1989, the date of trial, Appellee's counsel at Appellee's request, solicited the Prosecutor, in the presence of the trial Judge, for a plea offer of First Degree Murder with a recommendation of mercy (Tr. p. 71). At that time, counsel for Appellee then informed the Court that the psychiatrists, Dr. Gallimore and Dr. Haynes, had informed counsel that they did not believe that Hatfield was competent to make that decision (Tr. pp. 72-73). After a lunch break, the parties returned to the courtroom to begin trial, at which point Appellee's counsel advised the Court that Hatfield wished to plead guilty against counsel's advice (Tr. p. 78). At that point, the trial Judge questioned Hatfield about his decision to plea guilty, his understanding of the proceedings and what he did on the day of the murder (Tr. pp. 81-99). The trial Judge opined that Hatfield met the threshold tests of competency and deemed him to be competent (Tr. p. 100). Counsel for Hatfield advised the Court that the psychiatrists had told them that the guilty plea was "merely another suicide attempt" (Tr. p. 101). Trial counsel admitted that Hatfield remembered what happened and was not in the same state of mind as the day of the murder. He further stated that the psychiatrist had also stated that Hatfield "may be exercising poor judgment by wanting to enter the guilty plea" (Tr. p. 102). Interestingly, trial counsel did not object to the guilty plea at that time nor did they proffer the testimony or report of either psychiatrist.

In State v. Sanders, 209 W. Va. 367, 549 S.E. 2d 40 (2001), this Court held, in syllabus Point 2, that "[n]o person may be subjected to a trial on a criminal charge when, by virtue of mental incapacity, the person is unable to consult with his attorney and to assist in the preparation of his defense with a reasonable degree of rational understanding of the nature and object of the proceedings against him." Syllabus Point 1, State v. Milum, 159 W. Va. 691, 226 S.E. 2d 433

(1976). "Syllabus Point 6, State v. Barrow, 178 W. Va. 406, 359 S.E. 2d 844 (1987). The Sanders Court also held, in Syllabus Point 3, that "[e]vidence of irrational behavior, a history of mental illness or behavioral abnormalities, previous confinement for mental disturbance, demeanor before the trial Judge, psychiatric and lay testimony bearing on the issue of competency, and documented proof of mental disturbance are all factors which a trial Judge may consider in the proper exercise of his [or her] discretion [to order an inquiry into mental competence of a criminal defendant]". Syllabus Point 5, State v. Arnold, 159 W. Va. 158, 219 S.E. 2d 922 (1975).

In the present case, the trial Judge acted appropriately. When advised that Hatfield desired to enter a plea of guilty, Judge Maynard, fully advised as to the issues raised by trial counsel as to Hatfield's decision to enter the plea, engaged the Appellee in a lengthy discussion to determine his competence. Any fair reading of the discussion between the trial Judge and Appellee reveals that he answered appropriately, insightfully and candidly to the Court's questions. Unlike the Defendant in Sanders, Hatfield's demeanor on February 27, 1989, was devoid of behavioral abnormalities, bizarre behavior or evidence of pre-existing psychosis as observed by Sander's trial counsel. Importantly, none of Appellee's expert evaluations has diagnosed Hatfield with a psychosis or mental disease. Furthermore, Hatfield's trial counsel made no representations to the Court to suggest that he was incompetent and unable to enter a plea but only suggested that he "may be exercising poor judgment by wanting to enter the guilty plea".

"Because a trial Court is able to observe the demeanor of the Defendant and consequently has a better vantage point than this Court to make determinations regarding mental competency, we will disturb a lower Court's ruling denying a psychiatric examination and related proceedings only where there has been an abuse of discretion". State v. Arnold, 159 W. Va. at 163, 219 S.E. 2d 925.

In order to demonstrate that the lower Court abused its discretion in refusing to afford him an additional competency hearing (a Defendant) "must show facts such a reasonable trial Judge should have experienced doubt about the accused's continued competency to stand trial", Sanders at 376, citing Reynolds v. Norris, 86 F. 3d 796, 801 (8th Cir. 1999); see also U.S. v. Crews, 781 F 2d 826, 833 (10th Cir. 1986).

In light of the demeanor of the Defendant, Hatfield, and his responses to the Court's inquiry into his competence to enter a plea, the trial Judge acted appropriately in accepting his guilty plea on February 27, 1989. The Appellee failed to show in the underlying proceeding that facts existed to cause a reasonable trial Judge to have experienced doubt about Hatfield's competence on February 27th.

The Special Judge erred in applying the principles set forth in Sanders by basing his decision on the trial Judge's failure to order a full evidentiary hearing at the time of the competency ruling on January 27, 1989. As per Sanders, the focus should have been on the reasonableness of the trial Judge's decision on February 27, 1989, to accept Hatfield's guilty plea without further competency proceedings. Appellee produced no facts to show that the trial Judge should have doubted his competency to enter a plea. By relieving Hatfield of his duty to make this showing in the Habeas Corpus proceeding, the Special Judge abused his discretion therein.

B. EVEN IF THE FAILURE TO CONDUCT AN EVIDENTIARY HEARING ON APPELLEE'S COMPETENCE TO STAND TRIAL BEFORE ACCEPTING HIS GUILTY PLEA WAS IMPROPER, ANY ERROR WAS CURED BY SUBSEQUENT PROCEEDINGS.

Following his sentencing on December 6, 1989, Hatfield appealed his convictions to this

Court upon the basis that he was not competent to enter his guilty plea. The Court held in Hatfield I that "remand was required to make certain inquiries of Defendant and ask Defendant whether he understood counsel's reasons for opposing guilty plea".

Accordingly, the case was remanded and the trial Judge held a hearing on December 19, 1996. Thereupon, the trial Judge elicited a statement from trial counsel, Lafe Chafin, who stated that he advised Hatfield not to plead guilty in 1989 because he had questions about his competence and that he believed that, at the time of the plea, the Appellant was only interested in "self-punishment" (12-19-96 TR. pp. 11-12). Hatfield then testified that he felt competent at that time and that he understood the objections of his trial counsel to the entry of the guilty plea on February 27, 1989 (12-19-96 TR pp. 16-17). Upon further questioning by the Court, Hatfield stated that he no longer desired to plea guilty and wished to withdraw his guilty plea and stand a jury trial, to which the State objected (12-19-96 TR p. 17).

In upholding the original plea of February 27, 1989, the trial Judge made specific references to the appropriateness of Hatfield's remarks in the plea hearing as well his orientation as to time and place, his recollection of recent and distant events and his understanding of the proceedings and the consequences of his plea (12-19-96 TR pp. 32-47).

The trial Judge also referenced the fact that, on remand, he had authorized an additional evaluation of Hatfield by a psychiatrist, but that one of Hatfield's counsel had objected to the evaluation, so it was cancelled (12-19-96 TR. pp. 21-23).

By Order of January 28, 1998, signed by Senior Judge James O. Holliday, Hatfield's request to withdraw his guilty plea was denied and it was ordered that the original sentence of the Court was ratified.

Hatfield appealed the decision of January 28, 1998, to the West Virginia Supreme Court of Appeals. In Hatfield II, this Court noted that the purpose of the Court's remand as set forth in Hatfield I was to "ascertain further information as to whether (Hatfield) was competent on the day he originally entered the guilty pleas". The Court noted that the trial Judge, on remand, sought to have Appellee examined by a Court-appointed psychiatrist but that the Appellee had refused to undergo further psychological evaluation. The Court further found that the trial Judge made the necessary inquiry required by Hatfield I and still found the Appellant to be competent at the time he entered his plea. This Court then held that "we conclude that the lower Court followed this Court's directive on remand and did not deny (Hatfield) his due process rights in so doing", Hatfield II at 130.

Thus, this Court specifically addressed the need for an additional inquiry into competence and concluded that the proceeding on remand was satisfactory and did not violate Appellee's due process rights. In paragraph 34 of the Supplemental Order of March 16, 2007, the Special Judge asserts that the "specific due process issue raised in Petitioner's Habeas Corpus petition" (full evidentiary hearing on the competency issue) was not addressed in either Hatfield I or Hatfield II. This is simply not accurate.

In State v. Cheshire, 170 W. Va. 217, 292 S.E. 2d 628 (1987), this Court recognized that the remedy to correct any defects in the competency process was not to vacate and set aside the underlying convictions, but instead to remand the case with directions to the Court to conduct another hearing so that it could make specific findings, which in Cheshire went to the issue of her ability to assist counsel and understand the proceedings. Here, Hatfield I remanded the competency issue back to the trial Judge for further inquiry because of the second suicide attempt (after the initial

competency ruling) and to ascertain whether Appellee understood trial counsel's objections to his guilty plea. The Court's ruling in Hatfield II goes precisely to the issue of correcting any defects in the initial competency ruling. The Special Judge erred in interpreting Hatfield II as failing to resolve the competency issue and, specifically, the Special Judge erred in ignoring the Court's holding that the procedure on remand resolved the competency issue and "did not deny (Hatfield) his due process rights in so doing". In this regard, the Special Judge clearly abused his discretion.

C. EVEN IF THE TRIAL COURT COMMITTED ERROR IN NOT HOLDING A FULL EVIDENTIARY HEARING ON THE ISSUE OF COMPETENCY PRIOR TO ACCEPTING APPELLEE'S GUILTY PLEA, SUCH ERROR WAS HARMLESS.


"Failure to observe a constitutional right constitutes a reversible error unless it can be shown that the error was harmless beyond a reasonable doubt". Syllabus Point 5, State ex rel Grob v. Blair, 158 W. Va. 647, 214 S.E. 2d 330 (1970); Syllabus Point 16, State v. Ladd, 210 W. Va. 413, 557 S.E. 2d 820 (2001). Here, assuming arguendo that this Court determines that the Hatfield II decision is not dispositive on the adequacy of the trial Judge's competency rulings, the trial Court's inquiry as to competency on February 27, 1989, and the additional inquiry conducted on December 19, 1996, certainly render any such defect harmless. As pointed out above, Hatfield II specifically finds that Appellee's due process rights were protected by the additional inquiry. Furthermore, it is not unprecedented for this Court to hold that the failure to conduct a hearing mandated by law constitutes harmless error. In State v. Goff, 168 W. Va. 285, 284 S.E. 2d 362 (1981), the Defendant, previously convicted for unlawful wounding, was charged with a probation violation and the State sought to have his probation revoked. Mr. Goff was denied a preliminary hearing as provided by the Rules of Criminal Procedure. The Court held that the failure to hold the preliminary hearing did not affect

the Defendant's substantial rights and any error was harmless beyond a reasonable doubt. In the context of competency, this Court held in White v. Haines, 215 W. Va. 698, 601 S.E. 2d 18 (2004) that "a criminal defendant only has the right to sufficient due process. In Sanders, we stated that for a criminal defendant to prevail on a procedural due process claim, the criminal Defendant needs to demonstrate that he or she was denied an adequate procedure for determining mental competency after the trial Court was presented with evidence sufficient to prompt good faith doubt regarding incompetency". Sanders, 209 at 377, 549 S.E. 2d at 50. Here, the process has been recognized by this Court in Hatfield II as fair and adequate. The failure of the trial Court to conduct a full evidentiary hearing on competency prior to accepting Appellee's guilty plea, if error, is harmless under all of the facts, circumstances, rulings and procedures herein.

VI. CONCLUSION

Upon the foregoing facts, circumstances, authorities and arguments, the Appellant respectfully prays that this Honorable Court reverse the Supplemental Order of April 16, 2007; reinstate Petitioner's sentence of First Degree Murder without the possibility of parole and concurrent sentences of not less than two years nor more than ten years for two counts of Malicious Wounding; and remand this matter to the Circuit Court of Wayne County for an Omnibus Hearing on the remaining issues in Petitioner's Habeas casse.

RESPECTFULLY SUBMITTED,
Howard Painter, Warden
By Counsel



THOMAS M. PLYMALE, Assistant
Wayne County Prosecuting Attorney
Counsel for Appellant - Respondent

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CERTIFICATE OF SERVICE

I, Thomas M. Plymale, counsel for Appellant-Respondent, do hereby certify that true copies of the foregoing Brief of Appellants was served upon the following individuals this 28th day of November, 2007, by placing the same in an envelope, properly addressed with postage fully paid and depositing true copies thereof in the United States Mail:

Lonnie C. Simmons, Esq.
Ditrapano, Barrett & Dipiero, PLLC
604 Virginia Street, East
Charleston, West Virginia 25301

David R. Tyson, Esq.
Tyson & Tyson
418 11th Street
Huntington, West Virginia 25701



THOMAS M. PLYMALE, ESQ.